

1 Honorable Christopher M. Alston
2 Hearing date: September 4, 2024; 9:30 a.m.
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6 IN THE UNITED STATES BANKRUPTCY COURT FOR THE
7 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

8 In re:) Chapter 7
9 MAD ABOUT GARDENING LLC,) Bankruptcy No. 24-11395-CMA
d/b/a Toland Flags,)
10 Debtor(s).) TRUSTEE'S REPLY TO DEBTOR'S
) RESPONSES TO TRUSTEE'S MOTION
) FOR AN ORDER AUTHORIZING
) ABANDONMENT OF PROPERTY OF
11) THE ESTATE

12 COMES NOW the duly appointed trustee, Michael P. Klein, through counsel, The Livesey
13 Law Firm, and Rory C. Livesey, and files this combined reply to (1) Debtor's Objections to
14 Evidence Relied Upon in Apanage Corporation's Motion for Order Directing Trustee to Reject or
15 Terminate Lease, Vacate Premises, and Remove or Abandon Property, or Alternatively for Stay
16 Relief (ECF No. 14 and 13 Respectively); and to Mad About Gardening, LLC's Trustee's Motion
17 for an Order Authorizing Abandonment of Property of the Estate (ECF No. 18), and (2) Debtor's
18 Joint Response to Apanage Corporation's Motion for Order Directing Trustee to Reject or
19 Terminate Lease, Vacate Premises, and Remove or Abandon Property, or Alternatively for Stay
20 Relief (ECF No. 14 and 13 Respectively); and to Mad About Gardening, LLC's Trustee's Motion
21 for an Order Authorizing Abandonment of Property of the Estate (ECF No. 18).

22 I. DEBTOR'S STANDING

23 Initially, it is uncertain on whose behalf the "debtor" is responding or that the debtor has
24 standing to file an objection. Upon the filing of the petition, the trustee became the representative
25 of the corporate debtor. 11 U.S.C. § 323. *See, generally, Commodity Futures Trading Comm'n v.*
Weintraub, 471 U.S. 343,352, 105 S. Ct. 1986, 1993, 85 L. Ed. 2d 372 (1985). Possibly the

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1 objection is being filed on behalf of Bruce Solly and Traci Tanner, the owners of the debtor.
2 However, they are debtors in their own Chapter 7 proceeding (Case No. 24-11396) and will
3 presumably be granted a discharge. They have no pecuniary interest in the outcome of this hearing.
4 Nevertheless, this reply will use the term debtor when addressing the response.¹

5 **II. OBJECTION TO EVIDENCE**

6 The debtor objects to the trustee's reliance on the value placed on the debtor's personal
7 property by Colin Murphy of James G. Murphy Company ("Murphy"). That is an over-
8 simplification of the trustee's process in determining that abandonment is in the best interest of the
9 estate. Initially, Murphy is not testifying. He is one source of information the trustee used in
10 making his decision. In his declaration (Docket No. 19), the trustee lays out his analysis in
11 determining that abandonment was appropriate. He personally visited the debtor's premises with
12 Murphy, he reviewed the debtor's schedules, reviewed the UCC filings and he questioned the
13 principal of the debtor at the creditors' meeting. In his sound business judgment he has determined
14 that abandoning the property is in the best interest of the estate. *See In re Moore*, 110 B.R. 924, 927
15 (Bkrtcy. C.D. Cal. 1990). Moreover, the trustee must be mindful of the landlord and its mounting
16 administrative claim caused by the estate's continued occupancy of the property. A sale with a
17 carveout is a possibility, but the trustee then has to examine whether he can meet the requirements
18 of such a sale, specifically whether such a sale will provide a meaningful distribution to the
19 creditors. The bankruptcy trustee must determine, in his sound business judgment, what disposition
20 of an asset is in the best interest of the estate. In recommending abandonment, Mr. Klein did not
21 rely solely on the information provided by Murphy. Murphy did provide the trustee with an
22 estimate of the value of the equipment, but that was only one of several things considered in making
23 his decision. Murphy's opinion is not being offered as evidence. It is one of many factors
24 considered by the trustee.

25 ¹This motion has become procedurally quite cumbersome with the related debtors and identical pleadings filed
in both cases. In this reply the trustee is only addressing the debtor's response to his motion to abandon.

III. RESPONSE TO OBJECTION TO ABANDONMENT

With all respect to the parties involved, the objection seems to be lacking a point. Perhaps more appropriately, the objection seems to be lacking an objective. The concern seems to be with the ultimate disposition of the assets of the estate and that the trustee should try harder to sell the assets. The principals of the debtor seem concerned that they will ultimately be responsible for dealing with the abandoned property. However, they are in their own Chapter 7 proceeding. Presumably they will be discharged of any personal obligation incurred related to the debtor. They need not be involved in the removal or storage of the personal property. Assuming there is an abandonment, the removal of the property will be an issue between the landlord and the secured creditors. The parties will be able to pursue their state court remedies.

IV. CONCLUSION

The debtor is second guessing the trustee's decision to abandon the debtor's personal property. It has engaged in speculation, but has not raised any points that the trustee didn't consider in determining that abandonment is the proper disposition for the assets.

RESPECTFULLY SUBMITTED this 30th day of August, 2024.

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/S/ *Rory C. Livesey*

Rory C. Livesey, WSBA #17601
Attorney for Michael P. Klein, Trustee

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